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Trial of B. Shaw -1822

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TRIAL

OF

BENJAMIN SHAW, JOHN ALLEY JUNIOR,

JONATHAN BUFFUM, AND

PRESERVED SPRAGUE,

FOR

RIOTS

AND

DISTURBANCE OF PUBLIC WORSHIP,

IN THE SOCIETY OF

QUAKERS,

AT

LYNN, MASSACHUSETTS,

BEFORE

THE COURT OF COMMON PLEAS,

HELD AT IPSWICH, MASSACHUSETTS, MARCH 16TH, 1822.

SALEM:
PUBLISHED BY CUSHING & APPLETON.
1822.

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V

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DISTRICT OF MASSACHUSETTS, to wit:
District Clerk's Office.

BE IT REMEMBERED, that on the first day of April, A.D. 1822, and in the forty-sixth year of the Independence of the United States of America, CUSHING & APPLETON, of the said District, have deposited in this office the title of a book, the right whereof they claim as Proprietors, in the words following, to wit:

Trial of Benjamin Shaw, John Alley junior, Jonathan Buffum, and Preserved Sprague, for Riots and Disturbance of Public Worship, in the society of Quakers, at Lynn, Massachusetts, before the Court of Common Pleas, held at Ipswich, Massachusetts, March 16th, 1822.

In conformity to the Act of the Congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned:" and also to an act entitled, "an act supplementary to an act, entitled, an act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned; and extending the benefits thereof to the arts of designing, engraving and etching historical, and other prints."

JOHN W. DAVIS,
Clerk of the District of Massachusetts.

TRIAL FOR RIOTS, &c.

At the Court of Common Pleas holden at Ipswich, within and for the county of Essex, March Term, 1822. Present,

Hon. SAMUEL HOWE, *Associate Justice.*

BENJAMIN SHAW, JOHN ALLEY junior and JONATHAN BUFFUM, were arraigned upon an indictment found against them at this term. The indictment was in the words following, to wit:

COMMONWEALTH OF MASSACHUSETTS.

ESSEX, ss.

At the Court of Common Pleas, begun and holden at Ipswich, within and for the county of Essex, on the third Monday of March, in the year of our Lord one thousand eight hundred and twenty two.

The Jurors for the said Commonwealth upon their oath present, that Benjamin Shaw, of Lynn, in the county of Essex aforesaid, cordwainer, John Alley junior, of said Lynn, trader, and Jonathan Buffum, of said Lynn, painter, together with divers other evil disposed persons to the Jurors aforesaid as yet unknown, on the seventeenth day of February, in the year of our Lord one thousand eight hundred and twenty two, the same being the Lord's day, at Lynn aforesaid, in the county aforesaid, with force and arms, did unlawfully, riotously and routously assemble and gather together to disturb the peace of the Commonwealth; and being so then and there assembled and gathered together, a very great riot, rout, tumult and disturbance did then and there make and cause to be made; and then and there, with force and arms, unlawfully, riotously, routously and injuriously, did wilfully interrupt and disturb a certain society of people of the religious denomination of Christians called Quakers, being an assembly then and there met for the public worship of God, within the Friends' meeting house, so called, there situate, being the place of their assembling, by then and there seizing and occupying the ministers' gallery, so called, being the part of said meeting house which the elders and ministers of said society, and such other persons as are thereunto invited by said society, and none others, are by the order and usages of said society allowed to occupy during the meetings of said society for the purposes of public worship, they the said Benjamin Shaw, John Alley, junior, and Jonathan Buffum not being elders or ministers of said society, nor invited as aforesaid, but on the contrary being forbidden by said society to occupy the ministers' gallery aforesaid, and other wrongs to the said society then and there unlawfully, maliciously, riotously and routously did, to the great terror and disturbance of the good people of the said Commonwealth, in contempt of the said Commonwealth

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And the Jurors aforesaid upon their oath aforesaid do further present, that the said Benjamin Shaw, John Alley junior and Jonathan Buffum, together with divers other evil disposed persons to the Jurors aforesaid as yet unknown, on the fourteenth day of February in the year of our Lord last aforesaid, at Lynn asoresaid, in the county aforesaid, with force and arms did unlawfully, riotously and routously assemble and gather together to disturb the peace of the said commonwealth, and being so then and there assembled and gathered together, a very great riot, rout, tumult and disturbance then and there did make and cause to be made, and then and there, with force and arms, unlawfully, riotously, routously and injuriously, did wilfully interrupt and disturb a certain society of people of the religious denomination of Christians called Quakers, being an assembly then and there met for the public worship of God within the Friends' meeting house, so called, there situate, being the place of their assembling, by then and there seizing and occupying the ministers' gallery, so called, being the part of the meeting house last aforesaid which the elders and ministers of the same society, and such other persons as are thereunto invited by said society, and none others, are by the order and usages of said society allowed to occupy during the meetings of the same society for the purposes of public worship, they the said Benjamin Shaw, John Alley junior, and Jonathan Buffum not being elders nor ministers of said society, nor invited as last aforesaid, but on the contrary being forbidden by said society to occupy the same ministers' gallery; and other wrongs to the said society then and there unlawfully, maliciously, riotously and routously did, to the great terror of the good people of the said Commonwealth, in contempt of the said Commonwealth and the laws thereof, to the evil example of all others in the like case offending, and against the peace and dignity of the said Commonwealth.

A TRUE BILL,

ISAAC DODGE, FOREMAN.

There was an indictment against Preserved Sprague for the same offences on only one of the days for which the other defendants were charged.*

By consent of all the defendants both indictments were tried at the same time.

They were then called upon to answer asfollows, to wit:

Clerk—Benjamin Shaw, what say you to this indictment, are you guilty thereof or not guilty?

*On the 18th of February last, the defendants were brought before Ichabod Tucker, Esq. one of the magistrates of the county, to answer for the same offences for which they are charged in the indictments. After a full examination, they were ordered to recognize with sufficient surety, in the sum of $100 each, for their appearance at the present term of the Court of Common Pleas. They refused to recognize, and were in consequence committed to the jail in Salem, where they remained till they were now brought to Court to take their trial.

Shaw—I am not guilty of any thing but going into the high seats.

The Clerk put the same question to John Alley jun.

Alley—I am guilty and not guilty.

His counsel requested Alley to plead not guilty. He replied, "I shall say what I have a mind to."

Upon some explanation of the charges in the indictment, and of the effect of the plea, addressed to Alley by the Court, he said, "I can answer no otherwise than that I am guilty and not guilty—that is all I can say about it—it takes two to make one."

The Clerk then inquired of Buffum whether he was guilty or not guilty.

Buffum—I acknowledge no guilt—I am not guilty.

The Court then asked Alley if he could say as Buffum did, that he acknowledged no guilt. He replied, "I am guilty and not guilty—you must make as much of it as you can." The Court then ordered the plea of not guilty to be recorded for Alley.

Sprague pleaded not guilty to his indictment.

The defendants' counsel then asked leave of the Court to consult with the defendants a short time. In a few moments they returned into Court, and said they were ready for their trial.

Mr. PICKERING, as attorney for the Commonwealth, after a consultation with the counsel of the defendants, informed the Court, that from the appearance of Alley, and the indications of insanity which were so obvious, he considered it his duty to enter a *nolle prosequi* to the indictment against him, which was accordingly done.

The Clerk then informed Alley that he was discharged; and he left the bar.

The Jury were then called and empannelled, as follows:

Jabez Farley, Foreman, Ipswich.	Israel Foster, Boxford.
Amos Brickett, West Newbury.	Samuel B. Graves, Salem.
Nathan Choate, Essex.	Cutting Moody, Haverhill.
John Davis, Beverly.	Oliver Appleton, Ipswich.
Richard Dodge, Beverly.	Josiah Brown, Ipswich.
Nathaniel Foster, Newburyport.	Thomas Perkins, Newburyport.

Buffum requested that the Jury might be asked whether any of them had formed any opinion against the defendants.

The Court inquired as requested, and no person having replied, the cause was opened for the government by Mr. MERRILL, as follows:

May it please your Honor,
and you, Gentlemen of the Jury,

The prosecution against the respondents at the bar has been commenced for an offence of rare occurrence, and to the commission of which there can be little inducement or temptation. This offence is the riotous and wilful disturbance of a religious society when assembled for public worship. Every individual claims the right of worshiping GOD without molestation according to the dictates of his own conscience; this is a natural right recognized in the declaration of rights, and confirmed by the

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Each monthly meeting chooses annually two or more of each sex to be *overseers*, and one or more of each sex to be *elders*, in each *particular meeting*. The duties of these elders are similar to those of the elders of congregational churches, and the duties of the overseers are analagous to the congregational parish committees.

Few sects adopt so many precautions as the Friends to prevent the intrusion of immoral and unqualified persons into their ministry; no person is a regular *minister* of the society until *approved* as such successively by the monthly, quarterly and yearly meetings. Every member may indeed speak in the meetings, until admonished by the elders or others that his preaching is unprofitable on account either of the style, elocution, or doctrines. To preach or exhort after advice to desist, is a breach of the order of the society.

The Friends, like all other religious societies, under every system of religion, whether human or divine, claim and exercise the natural right of enforcing discipline for self-government and self preservation: this society has laws, privileges and usages, positive and written, or implied and traditional, which it guards from abuse and violation by the sanctions of admonition and expulsion Offenders, who are too obdurate and refractory to be reclaimed by admonition and persuasion, are excluded from the privileges of the society by excommunication or *disownment*. That the Friends have exercised the right of disowning from the time of George Fox, the founder of the sect, is proved by this extract from Clarkson's Portraiture of Quakerism:

"I shall conclude the discipline of the Quakers by making a few remarks on the subject of disowning.

"The Quakers conceive they have a right to excommunicate or disown; because persons, entering into any society, have a right to make their own reasonable rules of membership, and so early as the year 1663, this practice had been adopted by George Fox, and those who were in religious union with him. Those who are born in the society are bound of course to abide by these rules, while they continue to be the rules of the general will, or to leave it. Those who come into it by convincement are bound to follow them, or not to sue for admission into membership. This right of disowning, which arises from the reasonableness of the thing, the Quakers consider to have been pointed out and established by the author of the christian religion, who determined that if a disorderly person, after having received repeated admonitions, should still continue disorderly, he should be considered as an alien by the church."

A member disowned by a monthly meeting has the right of appeal to the quarterly meeting; if the decision is there affirmed, he may further appeal to the yearly meeting, and the disownment may be reversed on appeal either for error in fact or in the mode of proceeding; but until reversal, the person disowned is bound to submit to the subsisting judgment.

The meeting houses of the Friends are separated into two divisions, one for the males, the other for the females; all the members, except the ministers and elders, sit in perfect equality on the long benches on the floor of the house: in each house there is an elevated seat or gallery in which the ministers and elders are accustomed to sit, facing the meeting: this gallery is sometimes called the *raised seats*, is 5 or 6 feet above the floor, and is elevated for the purpose of enabling the elders to watch over and preserve the order of the meeting, and the ministers to be heard when speaking. By immemorial usage, in all the meetings, these seats have been appropriated to the accommodation of the ministers, elders, and such other venerable and respected members as have been invited by the officers of the society. It is not pretended that any positive written rule exists to this effect; but it is generally and clearly known in this society what description of persons have a right, and are accustomed to sit in the ministers' gallery, as it is among Congregationalists who are entitled to sit in the pulpit or deacons' seats.

The respondents are charged in the first count in the indictment with a *riot*, in wilfully disturbing and interrupting this society by forcibly intruding into and seizing the ministers' gallery. The late Chief Justice Sewall, in course of a trial in this county, took occasion to remark that people in general had very indistinct and erroneous notions of the nature of this offence, and that it was time they should know what a riot was. A riot may be committed without clamour, or tumult, or commotion, or bloodshed, or actual violence; it may be committed in perfect silence—in silence portentous as the calm that precedes a storm. A riot is a disturbance of the peace, by three or more persons, assembled with intent mutually to assist each other against any who shall oppose them in the execution of a lawful or unlawful enterprise, and afterward executing the same under circumstances tending to violence. When three or more co-operate and assist each other in executing an unlawful purpose, in committing a breach of a law, as in the present case, the violence, tumult and terror of the people, so often mentioned in the books, are supplied by construction and intendment of law, in odium of committing crimes by force of numbers; the circumstance of three or more co-operating in a breach of the peace is sufficient to deter a peaceable individual from interposing to restrain the offenders from the commission of the offence, for there is just ground to apprehend forcible resistance from those who are already engaged in violating the laws. Sir James Mansfield, in a case which arose from the O. P. controversy at Theatre Royal, Covent Garden, (2 Camp. 369. Clifford, Esq. v. Brandon) held that "if any body of men were to go to the theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and preconcerted scheme would amount to a *conspiracy*, and that the persons concerned in it might be brought to punishment. If people endeavour to effect an object [even a lawful object] by tumult

and disorder, they are guilty of a *riot*. It is not necessary, to constitute this crime, that personal violence should have been committed, or that a house should have been pulled in pieces. The law is, that if any person encourages or promotes, or takes part in riots, whether by words, signs or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter, and he is liable to be arrested for a breach of the peace. In this case, all are principals." The respondents must be convicted of the offence charged in the first count, if you are satisfied from the evidence that three or more of them being assembled, mutually assisted and encouraged each other in the commission of this wilful disturbance, under circumstances tending to violence.

In the three next counts the respondents are charged with the offences of wilful disturbance of the society of Friends, when met for public worship, and with rude and indecent behaviour. They must be convicted on these, if the government satisfies you that they wilfully committed any act that frustrated the purpose for which the society assembled; for the meeting houses of all sects are sanctuaries in which parents, children, the aged and infirm, have a right to assemble for meditation and devotion, without even the fear of turbulence or annoyance.

The fifth count charges the respondents with a *conspiracy* to disturb this society. This crime is perpetrated whenever two or more confederate to do an act prejudicial either to the public or individuals, or to do a lawful act by unlawful means, whether the confederates afterward proceed to execute the act, or not: even the *inciting* of another to commit a breach of the law is a misdemeanor; "God forbid" said Lord Kenyon, "that this should not be considered an offence in a country professing to have laws, morals and religion."

The sixth count charges them with a similar riot on the 14th Feb. to which the principles of law I have before stated will apply.

It will be proved to you that all the respondents have been accustomed to worship as members of the Friends' meeting at Lynn; for a few months past, these with a few other malcontent members of the society have disturbed the meeting by irregularly seizing the ministers' gallery, and under pretence of preaching, insulted their brethren by uttering profane, coarse and opprobrious language. Three of them have been disowned, and denied the privileges of the society; the specific charges against them, for which they were disowned, cannot by law be investigated on this trial, as the society has exclusive jurisdiction of the violations of its orders and rules. I mention the fact only as part of the evidence to shew the defendants acted together in these disturbances, having a common cause of dissatisfaction. Whether they were, or were not members of the society, the acts with which they stand charged, were equally unlawful and unjustifiable. Though the defendants had been thus disowned, and had forfeited the right of worshiping with

that society, they persisted in their irregular and disorderly conduct. and at length committed such outrages and extravagances that the Friends' society was compelled either to appeal to the civil authority for the protection that is guaranteed to all, or to abandon and desert the place in which they and their fathers have been accustomed to worship

[In course of the opening the counsel made frequent references to the "rules of discipline of the yearly meeting held on Rhode Island, for New England."]

The witnesses to prove the allegations in the indictments were then called and examined.

Isaac Basset, jun. of Lynn, testified that he was one of the elders and overseers of the society of Quakers in Lynn. Previous to the affray of the 14th February, a committee appointed by the quarterly meeting came to Lynn to visit the society on account of the disturbances which had lately taken place. On the morning of the 14th February the committee advised us to take a stand against the disorderly conduct. This was agreed to by the overseers, and they appointed me to attend to it. At 11 o'clock the meeting for religious worship commenced. Benjamin Shaw, one of the defendants, was then sitting in the ministers' gallery. There is a movable partition about the middle of the house, which is raised during the meeting for public worship, and lowered when they proceed to their civil concerns. The ministers' gallery consists of two seats, one above the other; the highest is raised five steps from the floor of the house. I walked to Shaw, and endeavoured to persuade him to come down, but could not succeed. I then stepped down, and observed to the meeting, that the overseers considered it improper and disorderly for Shaw to take that seat. I again invited him to come down, but he declined. I observed, that he could not be admitted to sit there, agreeable to the usage of the society, and that his conduct was peculiarly improper, as he had been disowned the month previous. I then called on two friends, viz. Jacob Chase and Daniel Silsbee, to remove him, with as little disturbance as possible. When they went up to him, he braced himself against the railing, and split the seat. They removed him, and placed him on a seat on the floor of the house, next to the ministers' gallery. He refused to sit still; and one person sat on each side of him to keep him quiet. As he persisted in attempting to get away from them, I observed to the meeting. that as it appeared he could not be prevailed upon to be quiet, it became necessary to remove him from the house. I accordingly requested Chase and Silsbee to remove him; which they did, as far as the broad aisle: they were then interrupted by Caleb B. Alley, son of John Alley junior's advancing with his hands raised in a fighting attitude. It took several to secure Alley, and prevent his obstructing the others in taking Shaw out. A person in the forward seats rose, and said that he hoped no one would suffer himself to be removed from that house

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his sword. I said to him, "How dost th' do, John?" He answered me in the same way. I advised him to take off his sword. He said, I wont—we wont be imposed upon by you. I asked him what he meant, for I had never had any difference with him. He said, "You have imposed upon us—It is now Victory or Death—I shall carry this sword to meeting, and if you meddle with or impose upon us, I shall run you thro' as quick as wink." I said, "John, will thee do such a thing as that?" He said, "Yes, I will." I then parted with him. On seventh day evening, Feb. 16th, the overseers were together again. We concluded to warn them against farther disturbance, and if possible to get through another meeting without recourse to the civil authorities. On first day morning, the 17th Feb. I called on another overseer to go with me and warn Buffum. I went and endeavoured to convince him of the impropriety of his conduct in taking the gallery seat. After I had talked with him, he said I shall do as I think best. James Purinton and Jonathan Conner came in. I said to Buffum, "We must now warn thee against any further disturbance in our meeting." I had some minutes of a warning on paper, and took them out. He said, "We will be as strong as you are" I then began to read the warning. [The Court here inquired of the witness if he had a copy of it with him. He produced it, which was in these words:—

Jonathan Buffum,—We the Overseers of the society of Friends in Lynn, hereby warn thee hereafter to desist from all improper conduct, tending to disturb our religious meetings, either by sitting in the Ministers' Gallery seats, by speaking, or otherwise; for the following reasons, to wit:—having at a public meeeting, on the fourteenth instant, caused much disturbance by expressing thyself in the manner following, to wit:—

"You that profess to be quakers, christians, have shewn forth by your conduct the fruit of your hell-born principles, this day." And again, "Not because you are quakers, but because you are sons of Belial." And again, "You thirst for our blood; you want to feed upon us; *this* I call spiritual cannibalism."

Also, for persisting to sit in our meeting for discipline, often interrupting said meeting by reading and speaking.

And, furthermore, thou not being a member of our society, canst only attend our meetings by sufferance, and during thy good behaviour therein.—Lynn, 2mo. 17th, 1822.]

—Before I had finished reading, Buffum left us and went into the front room. Shortly after he returned in company with Daniel B. Alley and Thomas Wooldridge. I again commenced reading. Alley called it an imposition; they all three then went again into the front room and shut the door. By leave of Buffum's wife I went to the door where they were. After some conversation Alley called us persecutors. I said to him, that I wished to see him, to warn him against disturbing our meeting by taking the high seats. Daniel B. Alley had been disowned for ten years or upwards. I then left the house, and went to meeting. I took my seat by the side of the stairway fronting the door.

called Quakers, then and there met for the public worship of God, by their the said Benjamin Shaw, John Alley junior and Jonathan Buffum's seizing and occupying the ministers' gallery, so called, of the same meeting house, the said gallery being the place which the elders and ministers of said society, and such other persons as are thereunto invited by said society, and none others, are by the order and usages of said society allowed to occupy during the meetings of the said society for the purposes of public worship, they the said Benjamin Shaw, John Alley junior and Jonathan Buffum not being then and there elders nor ministers of said society, nor invited as last aforesaid, but on the contrary being forbidden by said society to occupy the ministers' gallery aforesaid.

And the Jurors aforesaid upon their oath aforesaid do further present, that the said Benjamin Shaw, John Alley junior and Jonathan Buffum, being persons of evil minds and dispositions, on the seventeenth day of February, in the year of our Lord last aforesaid, the same being the Lord's day, with force and arms, at Lynn aforesaid, in the county aforesaid, unlawfully and wickedly did conspire, combine and confederate, agree and meet together, with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, wilfully to interrupt and disturb a certain assembly of people of the religious denomination of Christians called Quakers, then and there met for the public worship of God within the Friends' meeting house, so called, there situate, the same being the place of their assembling, and to behave rudely and indecently within the walls of the same meeting house, the same being a house of public worship of the same assembly of people; and the said Benjamin Shaw, John Alley junior and Jonathan Buffum, with the said last mentioned persons unknown, in pursuance of the said conspiracy, combination, confederacy and agreement, afterwards, to wit, on the same day and year aforesaid, at Lynn aforesaid, in the county aforesaid, did wilfully interrupt and disturb the said last mentioned assembly then and there met as aforesaid for the public worship of God within the said last mentioned place of their assembling, and did then and there behave rudely and indecently within the walls of the said last mentioned house of public worship, in which the same assembly were then and there met for the public worship of God, by the said Shaw, Alley and Buffum's then and there seizing and occupying the ministers' gallery, so called, being the place which the elders and ministers of said society, and such other persons as are thereunto invited by the said society, and none others, are by the order and usages of said society allowed to occupy during the meetings of said society for the purposes of public worship, they the said Benjamin Shaw, John Alley junior and Jonathan Buffum, not being then and there elders or ministers of said society, nor invited as last aforesaid, but on the contrary being forbidden by said society to occupy the ministers' gallery aforesaid, to the evil example of all others in like case offending, and against the peace and dignity of the said commonwealth.

ed, I requested three others to remove Buffum, with the same precaution. While they were so doing, John Alley jun. cried out, *Let him alone, dont touch him upon the peril of your lives.* He moved up towards Buffum, and appeared to assist him in keeping his seat. We found that the three who were appointed to remove Buffum could not succeed. I then named several others to assist in taking them both out. When they were removed into the aisle, there was great confusion. Many got into the aisle, and nearly filled it up. One said, that was too bad, and stepped out to prevent their being removed. There were many present belonging to other societies. I requested Daniel Newhall to move out of the way. He said *I wont.* Joshua Wilder, a stranger, was speaking and making a noise. I requested him to be silent He said *I wont.* A number of others crowded forward. I had in my hand an umbrella, and had much difficulty in saving myself from being plunged out of the door. In five minutes as many as two hundred persons assembled outside of the door. I saw Buffum and the others carried out and removed to a neighbouring house, where I went to see that they were well taken care of; I then returned to the meeting, and found it pretty quiet. I was soon called out to see that proper means were used with respect to the persons carried out, and did not return All the defendants have been in the habit of worshiping at the Friends' meeting house. Sprague had never been in the ministers' gallery.

Upon cross examination, Friend Basset stated, that the overseers are appointed to treat with disorderly Friends. If the persons complained of persist in their disorderly conduct, they are reported by the overseers to the next monthly meeting, when it is usual for a special committee to be appointed to treat with them. This committee may report to the next or a subsequent meeting. If they report unfavourably, the persons complained of are disowned. They have then a right to appeal.

Buffum and Sprague were disowned at the meeting on fifth day, the 14th. Shaw had been disowned at the meeting previous. John Alley jun. has never been disowned.

The sense of society is ascertained, not by a majority, but by weight of character and standing. The witness has known persons to be disowned without the consent of all the society.

Upon the question being asked, whether the defendants were regularly disowned, the Court intimated that if the evidence already offered was taken to be true, the conduct of the defendants amounted to a riot, whether they were regularly disowned or not, and that evidence to the point of the regularity of the proceedings of the society in this respect, was not to be admitted.

The Counsel for the prisoners stated, that they considered it important to ascertain whether they were regularly disowned. If the Counsel for the government would admit that the defendants were still regular members of the society of Friends, and that it was lawful for them to take the high seats, they would agree that they had no right to take them in a violent

manner. They expected to show, by cross examination of the government's witnesses, that it has been the custom of the society never to take a vote, and that there never was an instance of a person's being disowned against the will of any members: in other words, they never act over the heads of other members. They stated also that the committee of the quarterly meeting were not regularly appointed, because there was no request for their appointment from the monthly meeting; and they further stated, that the defendants never were regularly disowned according to the usages of the society, but on the contrary were still entitled to the privileges of members, because the clerk of the meeting declared that he should pay no regard to the opinions of those who did not agree with the committee and the body of the society, and that according to the mode of proceeding the defendants might have been disowned by a small minority only.

The Counsel on behalf of the commonwealth stated, that they had not considered it important to inquire into the regularity of the society's proceedings in this respect. The fact of the defendants being disowned came out incidentally in the course of inquiry. If the proceedings were not regular, the defendants had a right to appeal; but until the sentence is reversed they have no rights as members of that society.

If they considered themselves aggreived, they ought to have adopted the regular course to obtain redress; but if, instead of so doing, they determined to redress themselves by violence, they were guilty of a riot. A riot may exist without an actual tumult: it may be committed without noise. Would any person hesitate to call it a riot, if a number of persons should in silence take possession of the Judge's bench, and persist in holding it? It is the combination of the prisoners with others, in attempting to assert their pretended rights by force, which constitutes the offence charged against them.

The Court decided that they could not go behind the proceedings of the monthly meeting, and should regret that the trial should not be conducted to the geral satisfaction; but they must be governed by the rules of law. They thought it immaterial, whether the defendants were regularly disowned or not. Even if they considered themselves aggrieved at the proceedings of the society in disowning them, and forbidding them to occupy the ministers' gallery, yet if the evidence offered by the government against them is believed, they were guilty of a riot. A settled minister of a congregational society would be guilty of that offence if he should go with two or more of his friends to take possession of his pulpit by force against the will of the society. If three or more undertake to accomplish a lawful act in an unlawful manner, they are guilty of a riot or conspiracy. The law will not permit persons to redress their wrongs by violence.

Friend *Basset* then proceeded with his testimony, and stated, in answer to the questions of the prisoners' counsel, that the high

seats are called the ministers' gallery.* The part on the men's side would accommodate twelve or more; the upper seat extends more than half the length of the house; only one minister and three or four elders usually occupy those seats at our particular meetings; others sometimes occupy them when invited; ministers and elders generally invite those whom they think fit; they are not invited by society as a body; no others go there except when the meeting is crowded, and then they go merely to make room; no minister was excluded from the seats by the defendants. John Alley jun. has contributed largely to the support of the society; he does not regularly attend meeting; he has been sometimes absent for six months; he would remain quiet at meeting, if suffered to do as he pleased; he is not disowned, but is under the notice of a committee. The defendants made no disturbance, except in taking the seats before mentioned The going there is disorderly. They did not appear disposed to offer violence if they were not interrupted. They came in near together. Jonathan Buffum came with his umbrella raised in a very resolute manner. In the morning after the sword was taken from John Alley jun. and Daniel B. Alley had left the meeting, there was no confusion. There was nothing remarkable in the manner of the others coming in. There is no written order about the high seats.† The preparative or monthly meeting gave no orders about removing them from the high seat. The witness did not recollect how many first days Shaw had set in that seat. He made no disturbance, except taking that seat, and speaking there in a way not approved of. He had been taken out of meeting several times before the 17th February for disorderly conduct. The witness himself had often taken him out, and staid at home from meeting to keep him away.

Mr. Saltonstall proposed to inquire of the witness, if persons, other than ministers, elders or overseers, have not set in the high seats every sabbath since the 17th February, for the purpose of shewing, as he stated, that it had caused no disturbance or interruption of public worship. It will tend to prove that their conduct was not the cause of the disturbance.

Mr. Merrill said, that it was true that several had since that time been guilty of the same offence as the defendants are

* It is understood that these seats are generally called, by the society of Friends, the high seats; but in Lynn, and perhaps some other places, they are known also by the name of the ministers' gallery.

† The following extract from the ancient records of the monthly meeting was offered in evidence, to shew that the usage with respect to the high seats has existed more than a century; but the Court deemed it unnecessary to be read to the jury. "At monthly meeting at Salem, March 12, 1715. We received from Salem preparative meeting an account concerning C. B. respecting his preaching and sitting up in the gallery; which being considered, do judge that he ought to forbear offering any thing by way of testimony for the future, and that he sit down out of the gallery until this meeting are fully satisfied that its his place and duty; to which he freely submits, and promises to be subject."

charged with; several had gone to meeting with an expectation of being carried to prison for their disorderly conduct, and had made preparations for that purpose; their going there was with a view of furnishing evidence for this trial.

The Court decided that the proposed inquiry was not admissible.

Friend *Basset* said that he was an elder, but did not sit in the high seat. It is the privilege allowed to any member of society, who has something to say, to rise in his seat and speak, but not to go into the ministers' seat. When their speaking is not satisfactory to Friends, it is their duty to be silent; and if they are not silent, it is disorderly.

Mr. SALTONSTALL asked the witness if persons are not understood by Friends to speak from the immediate influence of the spirit, without any previous preparation. He said his object was to show that Buffum's expressions were like the sermons often delivered in the Friends' meeting houses; that according to their principles no preparation is to be made; but when any one has a strong impression on his mind it was his duty to speak.

The Court stated, that this inquiry was immaterial, unless the persons who thus spoke usually went into the high seat. The Court inquired of the witness if it was considered regular for any one who wished to speak to go into the high seats. He answered, No. He said, enough elders, ministers, aged and honourable persons attended the monthly meetings to fill those seats,

Dr. Rowland Green, of Plainfield, in Connecticut, testified, that he belonged to the Society of Friends, and was a Physician. He had been an acknowledged minister in society eighteen years or more. He had visited various parts of the country. By the usages of society the high seats are appropriated for the ministers, elders, overseers, and the venerable and worthy. It depends upon the ministers, overseers and elders, to determine who constitute the venerable and worthy. The usage is the same throughout the country. The interior of all the meeting houses are constructed in the same way. He has frequently observed Shaw, Alley and Buffum. He first saw Shaw at a yearly meeting at Newport in Rhode Island—was struck with the singularity of his conduct, in going to the high seat; he was removed. The next time I saw him was at Lynn, last summer, where I attended as one of the committee of the yearly meeting. He obtruded himself into our committee meeting; when he came near me, I took him by the arm, told him his company was not wanted, and led him out of meeting. He then came in at another door, and was again led out. At last all the doors were fastened. The next day I saw him about the meeting house yard; he looked pale and distressed; I took his pulse, which was languid. I felt a compassion for the young man. He said that he did not sleep well, and that his appetite was poor. I conversed with him about his obtruding himself into our meeting. Taking all the circumstances together, I then thought, and be-

lieve I said, that his case might be a species of insanity. I was not with him more than ten or fifteen minutes. I did not prescribe any thing, but advised him to go home, and endeavour to be quiet. The next time I saw him was at quarterly meeting at Seabrook. He was then no more deranged than several others who appeared to be combined to disturb the meeting. He seemed to be in unison with others in a conspiracy. They attempted to disturb us in a select meeting of ministers and elders, and we could not proceed without fastening the doors. I observed at the public meeting Shaw sitting by the stove, and hoped he would be quiet. Soon afterward he went into the chamber gallery, and stood upon one of the upper beams. In about twenty minutes I heard a noise over my head, when the feet and legs of a man came down from the gallery over my head, and Shaw stepped down into the high seat. A member then called the attention of Friends to his conduct, and said he had been disowned by the monthly meeting. Shaw said he was not disowned, but that there were a few in the monthly meeting who were under the influence of the devil; and he spoke often in a reviling and abusive manner. He stood directly before an elderly stranger, in a position to keep him from the view of the meeting. Attempts were made to remove him. Soon afterwards, when a friend arose, concerned in supplication, and others rose also, Shaw sat down, suddenly, as if moved by machinery, and almost laid down. I saw nothing like insanity, except the above disorderly conduct. I saw him afterwards at a private house. He had no appearance there of insanity. He walked the room, and threw out harsh expressions.

I saw Buffum at a quarterly meeting, which he had no right to attend, as he was under dealing. He was invited to withdraw, but refused.

Obadiah Brown, of Providence, a Friend, stated the usage with respect to the high seats in the same manner as I. Basset. None are allowed to sit there except ministers, elders, overseers, and such others as are considered as having the concern of society at heart. He was at the meeting in Lynn on the 14th Feb. It was a noisy, disturbed meeting. He confirmed what Basset said respecting it in every particular.

Upon cross examination he said, that the overseers do not always sit in the high seats, but their business is to sit there, if so disposed. Those seats are never taken by young persons, except in very crowded meetings. The seats on the floor of the house are common to the whole society, but not the ministers' gallery.

Samuel Breed testified, that he was present on the 14th and 17th February. He was requested by the overseers to assist two others in taking Jonathan Buffum out of meeting. Preserved Sprague took hold of my coat, which was kersey, and pulled back so hard, that I was obliged to let go, and I was shoved out at the door. He pulled so hard as to tear my coat; he did not let go, till I let go Buffum.

There was a great press and crowd ; a general pressing into the aisle. The object of the press appeared to be to prevent our taking the prisoners out. I asked some one to take Sprague off. Witness confirmed the testimony of Basset as to Buffum, Alley and Shaw.

Daniel Silsbee testified, that on the 17th February his brother and himself were requested to take John Alley, jun. out of the high seats. Basset and others were endeavouring to clear the way. Witness was going forward and found it likely that Alley would be got clear: saw Sprague having hold of some one, pulling him. Much was said and done to prevent our carrying out Alley and the others ; as many as ten or twelve were concerned in endeavouring to prevent us.

Mr. CUMMINS asked the witness if he did not attempt to carry Shaw out on Sunday, the 10th Feb. This question was objected to.

Mr. CUMMINS stated, that he expected to prove that Shaw was in fact removed from meeting on Sunday the 10th, and carried to the work house, without any authority. He and his friends therefore thought they had a call, a spritual impulse, to go to the high seats, and bear testimony against this oppression. This mode of bearing testimony is according to the ancient usage of the people called Quakers. They acted conscientiously in going to those seats, and testifying against their being set apart for any particular portion of the society.

Mr. MERRILL contended that it was not competent for the defendants to make this inquiry. It was impious arrogance and blasphemy in them to set up any inspiration to justify them in violating the laws. If they can prove themselves evil spirits, mere air, in that case they may go unpunished ; but as long as they are palpable, something that we can see and feel, and confine within bars and bolts, they are amenable before civil tribunals to the laws as human beings, and must be punished in the flesh for those sins of the spirit which lead them to commit such outrages upon the community.

Mr. SALTONSTALL stated, that the defendants believed they had a right to ooccupy those seats. They did not know them by the name of the *ministers' gallery*. Their object in going there was to *bear testimony* by that act against what they considered an usurpation. The Quakers have been always remarkable for their singularities ; they are a peculiar people; they are in fact a community by themselves. The conduct of the prisoners in taking possession of those seats was not more singular than the conduct of George Fox, who was in the habit of going into the houses of other religious societies, or *steeple houses* as he called them, and inveighing against them for their idolatry. The persons now complained of have been in the habit of reading the books which contain accounts of those peculiarities. They felt it a duty to go to meeting, not by combination or violence, but quietly, and take those seats, and thus show that in their opinion they were not more sacred than other parts of the house ; and

that Shaw had been harshly treated, in being forcibly taken from the house the Sunday previous.

The JUDGE stated, that no person felt more respect for the society of Quakers than himself; but they must be judged by the same laws as other citizens. His objection to the testimony offered was, that instead of tending to exculpate the defendants it went to convict them of another riot. It may be true that they had no intention of committing any crime; but if they went to meeting with a determination to support Shaw in taking possession of those seats, this act of theirs was criminal. He decided therefore that the inquiry proposed by the defendants' counsel was improper.

Squiers Shove testified, that he was one of the committee appointed by the meeting of Salem and Lynn, to wait upon Shaw, and treat with him on account of his misconduct. We accordingly waited upon him; but he did not incline to treat with us as a committee, but would converse with us as neighbours. John Alley and Shaw said they would fight as long as they had a drop of blood in their bodies. Buffum was present. He said nothing, but smiled, and appeared to assent to their remarks. This was on the 12th Feb. On the 15th Buffum and Shaw came to my house; they rode up to the door. Buffum said the old order would be glad to settle for $5000. He said they had got six or seven stout men; and if they were not sufficient, a captain of militia in Lynn had offered to turn out his whole company. Alley had said before that they had got a number of able generals, and a strong body, to overset the old order. Witness was at the monthly meeting at Lynn on the 14th Feb. He confirmed the statement of Basset as to the occurrences at that time. Buffum and John Alley came in about the time of taking Shaw out. Philip Chase of Lynn, and another person, tried to prevent his being removed. Witness set with his back to them, and did not see so much as some others. Witness upon cross examination said that his first conversation with the defendants was on the 12th Feb. at J. Buffum's house. Buffum did not say that he should be sorry to see such a state of things, but appeared desirous of it. Witness has thought there would be blood shed, and his wife has in consequence staid away from meeting for two months. Shaw's character is that of an ignorant, wilful creature. Does not know much about Buffum—knows nothing against him. Sprague has the character of being peacable and orderly.

Ichabod Nichols, jun. testified, that he and Ezra Collins were a committee to wait upon Jonathan Buffum. The last time we called on him was on the 12th Feb. We told him we wished to know if he would treat with us. He declined. We called on him on account of a complaint against him for slander. When he went in, Squiers Shove was there. He said he would tell us whether he would treat with us or not, if we would give him a copy of the complaint, and a minute of our appointment. I observed, that this was contrary to usage, which he understood as

well as we, but that I would read the complaint. I accordingly read it. He said we might return to the meeting, and tell them they had sent us upon a Tom Fool's errand. John Alley jun. was present. He said we were leagued with the devil. He talked very loud, and in a threatening manner. B. Shaw and others came in. Alley said they were going to fight. Shaw said they would fight as long as they had a drop of blood. Buffum said nothing. I soon afterwards walked away. Buffum has said that if they were of the same disposition as we were, there would be blood shed. The elders and ministers only are entitled to sit in the ministers' gallery. So few sit there in our society in Salem, and our meeting has become so crowded, that we at length prevailed upon Edward Southwick, Jonathan Buffum sen. Caleb Buffum and William Frye, who were some of the oldest members, to take those seats. Never knew of other persons sitting there till within a few months.

Micajah Collins Pratt testified, that he was present at the meetings of the 14th and 17th Feb. and he confirmed the statement of Isaac Basset. He said Jonathan Buffum was standing at the porch. John Alley came with his sword; he stept up the aisle. Jonathan Buffum had his umbrella raised when Alley was seized by Basset. Preserved Sprague said, *Let that man go up.* Buffum said, *Let him go up, let him go up, I say.* Buffum stept over several seats to the high seat. We had to cut the belt before we could take the sword away. Alley's wife and son said, *Let him go up.* I said, we will not be trifled with by letting a man go up there with a sword. She said, we ought to be trifled with. Daniel B. Alley walked across in the high seats, and forbad our taking the sword from John. Daniel then seated himself with Shaw. In the afternoon I was one of those appointed by Basset to remove B. Shaw; John Alley forbad my touching him. Buffum said, *Let him alone, he is a peaceable man.* Jacob Purinton came in with Jonathan Buffum and John Alley. When I went in, there was a considerable number at the door, waiting for Alley to come with his sword. There was a great noise, and the women were much frightened. Upon being cross examined, witness said, that when Alley came in the morning, two thirds of the society were assembled. I do not know that Sprague got up. Buffum went forward to the high seat, with an umbrella raised. In the afternoon Buffum came in, and attempted to go up. Basset told him not to go; but he said he would. I went out with Shaw to take care of him.

David Hawks testified that he was present on the 17th February. He went on account of having heard of John Alley's intention to go there with a sword. Went into the porch, and stood alongside of young Abel Houghton. Houghton spoke and said, *Crowd up and stop the door, so that they shall not get them out.* Witness told him not to say those words again, or he would be prosecuted as a rioter. Houghton cried out again to shut the door, took hold of half of it, and with others shut it. Several cried out, *Mob! Mob!* They were taking out Alley, Shaw and

Buffum at this time. The riot act was read in the street by the Deputy Sheriff; 150 persons were present. Witness was much alarmed. He lamed his ancle in the crowd. The aisle was so full that he was forced out headlong.

James Purinton testified, that on the 17th Feb. he warned Jonathan Buffum and B. Shaw, not to go into the gallery seats. On the evening of the 16th the overseers concluded not to suffer them to go there. Witness took out the paper containing the reasons, began to read, and Buffum shut the door. Went with I. Basset and J. Conner—confirms Basset's statement. Daniel B. Alley said, the paper was not worth hearing. Saw John Alley jun. come to meeting in a sleigh, with his wife. He got out several rods from the door, and came up to the meeting upon the run, with a crowd following him. Some said, *That's right, there goes Alley.* Buffum was at the door. One or two said, John has gone in with a sword. Others said, That's right. Witness has always attended Friends' meeting. The ministers gallery is appropriated to the ministers, elders, overseers, and others whose life and conversation answer to their profession.

Philip Chase, of Salem, testified, that he had always belonged to the society of Friends. The high seats are exclusively appropriated to ministers, overseers and elders. Persons sitting there face the congregation. Was at the meeting on the 14th Feb.—confirms the statement of Isacc Basset. When they were removing Shaw, Caleb Alley rushed forward, using very profane language; He had his arms raised, and said, *By God or my God, you shall not carry him out.* Immediately afterward John Alley junior and Jonathan Buffum took the same place. When they were attempting to remove Shaw, he broke the seat where he was sitting.

Micajah Collins, of Lynn, testified, that he has been acknowledged minister of society, nearly twenty years. The usage respecting the high seats is the same as stated by the other witnesses. It is the same in all the societies, from Maine to North Carolina, all of which he had visited. Others besides ministers overseers and elders occasionally sit there, but not usually. On common occasions the highest seat is unoccupied. It is considered disorderedly for young persons to occupy them, except when the house is crowded, and they cannot get seats elsewhere. Nothing clamorous occurred after Shaw was removed on the 14th, except Buffum's speaking. On the 17th witness endeavoured to induce people to take their seats after the persons were carried out, which they did. He considers the conduct of the prisoners in taking those seats as highly disorderly. He has often been obliged to pass his own seat, because it was occupied by the prisoners.

Mr. Cummins then opened the defence, and addressed the Jury in substance as follows. I am apprehensive, that in consequence of the great variety of testimony, a mistake will arise as to the parties charged in this prosecution. Many persons besides the

defendants have been alluded to as confederates; but the defendants are not answerable for the acts of other persons. Your attention should be confined simply to the parties indicted; and the only question for your consideration is, whether they are guilty of the offences specifically alledged against them.

The defendants are all charged with a riot. In order to constitute this offence, three or more must co-operate. They must assemble with intent mutually to support each other in the execution of an unlawful enterprise, or of a lawful one in an unlawful manner.

Before you can convict the defendants, you must be satisfied that they occasioned the disturbance. We contend that they did nothing which necessarily tended to a breach of the peace. They are not answerable for the disturbance which took place, unless you are satisfied that they occasioned it wilfully.

[The Court here stated, that if the defendants intended to do the act which amounted in law to a disturbance, they are answerable, whether they considered it an offence or not.]

Mr. CUMMINS proceeded, and stated, that this was the first instance which had been known of a prosecution for a disturbance in the Friends' meeting house. In weighing the conduct of the defendants, the Jury should consider what are the usages of this society. An act may amount to a disturbance in one society, which would not be so considered in others. Suppose a person should go into a congregational meeting with his hat on, and rise in his seat to address the meeting: These acts would be disturbances; but it would be quite otherwise in the Friends' meeting. We say that there was nothing unusual or extraordinary in the conduct of the defendants on this occasion. They did nothing, except taking the high seats. Now if taking possession of those seats was not extraordinary, you must say that they did nothing to excite a disturbance. The meeting houses in Friend's societies are all held in common; there is no assignment of seats; on the contrary, people are seated promiscuously. All have equal rights in their houses, and no seats are more sacred than others. No confusion occurred till an attempt was made to remove them. But they are not accountable for the subsequent confusion, provided they were justified in taking those seats. They are not answerable for the act of John Alley in carrying the sword. He was an insane person, and the government have acknowledged it by discharging him. We shall shew also that Shaw was at this time deranged. This indeed appears already from one of the government's witnesses. With respect to the other defendants, we shall show that they support good characters. They have not been considered as disturbers of the peace, but are quiet and good citizens. Unless then they were guilty of an offence in taking a seat in the meeting house which they did not consider appropriated to any particular persons, and if this was not an unusual transaction at that meeting, you must find them not guilty.

The witnesses for the defendants were then examined.

Dr. Hazeltine testified, that he had been acquainted with Benjamin Shaw about five years. I always considered him very

modest and diffident, but at times inclined to derangement. I have so informed his friends. For the last three months I have no hesitation in saying that he has been partially deranged, though not generally. A man may be perfectly correct with respect to every operation of his mind, except upon some particular subject; and on the contrary he may be deranged in the same manner. Very many subjects produce derangement, such as love, fear, revenge, religion. The latter has a powerful effect. Shaw's character is that of an inoffensive man. He appeared for a considerable time under a great excitement about religion. On one occasion, last September, his conduct was very singular. He was going to meeting when I met him. He laughed, and I expected he was going to say something to me. He held out his hand. and said how do you do, Friend Hazeltine; I have nothing to say to thee, but I thought I would stop to tell thee so—I have nothing more to say now; so good bye. Whenever I met him before, he appeared rational, but he then appeared otherwise; I saw it in *his brilliant eye.*

Upon cross examination, the witness said, that he had not had much intercourse with Shaw for the last three months. He had not been called to visit him as a physician. Shaw's friends did not consider him deranged. The witness had frequently visited the Friends' meeting. He did not consider it the practice for persons to sit promiscuously in the high seats. Sprague and Buffum are upright and peaceable men. There is nothing exceptionable in their conduct, but their religious excitement.

Abel Houghton testified, that he was present at the Friends' meeting on the 14th February. I was on the second raised seat. The first thing that atratcted my attention was Issac Basset's stepping up to the high seat, and whispering to B. Shaw. Basset said to me, We conceive that B. Shaw is improperly in the high seat. He was sitting there alone, peaceably. Chase and Silsbee went to take him down. In getting him down they let him fall, I suppose accidentally. Silsbee put his hand round his throat. Shaw said, You may as well cut my head off as choke me to death. Basset said, Take him out. John Alley was there. I think Buffum came in at this time. I never heard the name of ministers' gallery till within a few weeks; they are usually called the high seats: they are commonly occupied by ministers and elders; but others sit there occasionally, and in two instances I have known persons sit there, who did not belong to the society. Sometimes the ministers take their seats on the floor of the house, but they usually take the high seats.

Shaw was present at a funeral last fall, and made several observations which appeared ridiculous. He said, with a laugh, If a beast dies, you would not make such a fuss; you had better take the the old man off. After the procession for the funeral was formed, he walked towards it, and said, you look very nice; if you had music, you would make a fine appearance. Shaw is considered as a harmless person. Sprague and Buffum's characters are good; I never heard them charged with any improper conduct Upon cross examination, witness said, that he had never heard others testify against processions at funerals.

He is not now a member of the Friends' society. He is one of those who have lately been disowned. Never saw any thing in Sprague or Buffum indicating derangement. He has acted as the particular friend of the prisoners in defending the prosecution, but not as their agent.

Edward Southwick testified, that he was at the meeting on the 14th. When I went in I observed Shaw there. Two had hold of him, and in carrying him out they made a good deal of disturbance. He is considered very innocent and inoffensive. I was at the funeral mentioned by Houghton, and noticed some peculiarities in Shaw's conduct. After the sitting broke, I heard him use some improper expressions.

I never heard the high seats called the ministers' gallery, till within a month. I should not think it a practice for young persons to sit there, nor for two or three persons, like the defendants, to go there. Others besides ministers and elders have set there when the house was crowded. I have myself.

Upon cross examination, witness said there had been frequent attempts to get Shaw out. Shaw said on one occasion, that they appeared much concerned about him, but they might take their concern and go to hell with it, for they could not go to heaven. He has been repeatedly carried out; at first he went out when requested; he never discovered any turbulence, till they took hold of him.

The order of society is, that when people speak in a manner not satisfactory, they are advised to desist.

Witness stated, that he had heard Shaw frequently use expressions which he could not justify consistently with his being rational. Upon being asked what he had observed in Shaw's conduct or language indicating derangement, he said, that on one occasion, after meeting, he heard him address Stephen Chase in the plural language, which he had not been used to do. Till within a year, witness had never heard him use any profane or improper language.

Witness, being asked if, after hearing Shaw utter such language in meeting, he had not when meeting was done invited Shaw home to dine with him, answered, Yes.

Thomas Arnold, of Rhode Island, stated, that he had known Benjamin Shaw for two years. He spent a night at my house. He appeared to be a very serious young man, and one of few words. He had some degree of depression, owing as I thought to religious excitement. I next saw him at the quarterly meeting at Lynn in October last. He came up to me while my horse was unharnessing. He was very talkative, and there was a peculiar turn in his eye, which attracted my atttention. There was a wandering levity in his manner, which fully satisfied me that he was deranged. I did not speak of it, except to one or two, who agreed with me in opinion. He once laid down on the floor at meeting. I afterwards saw him at Providence. He called at my house. There was a remarkable levity about him, and disposition to laughing. At meeting he took the high seat and sat very quietly. I found there was excitement in Friends' minds at his being in the high seats. Several spoke to me. I went up to him, took hold of his hand, and endeavoured to per-

suade him to come down, but could not succeed. Several persons afterwards went to him and removed him. They placed him on the floor of the house, and held him there. While on the floor he tried to speak. Some one put his hand to his mouth, and he was silent. I have discovered lucid intervals in him; have seen him three times at my house, and three or four times at other places.

Samuel Philbrick testified, that he was at the meeting on the 14th; he did not get there, till the disturbances were over. The meeting was not all assembled. He confirmed the statement of the other witnesses respecting the occurrences of the 17th. There was no disturbance, till the sword was taken from John Alley. In the afternoon there was no disturbance, before the defendants were taken out. I have been acquainted with Benjamin Shaw six or seven years. He has been a little singular ever since my acquaintance with him. He was very serious when he first became a member of our society. From that time till within six or eight months, he has been very reserved. I have known him to sit a whole evening without speaking. I discovered a wildness in his manner. He told me that he had an idea of taking his own life; he said he thought it was his duty. I told him it must be a delusion. This was two or three years ago. He continued in this depressed state till the early part of last summer; then he came out of it very unexpectedly. He often made communications in meeting which I consider improper, and some of his observations none could justify. I have in consequence considered his eccentricities as proceeding from derangement. He has repeatedly come into my house and laid down upon the floor, half an hour at a time.

Sprague and Buffum's characters are good.

The witness being asked by the counsel for the government if he had not said to others that he had received instructions from Shaw's observations about Mary Basset, he answered, that he had said he had received instructions from some of his communications, but not from the one in question. After Mary Basset had taken her seat, and one or two had taken hold of her to change her situation, Shaw rose, and said, that something had come before his mind which he thought it right to express to society: this was, "Let the old devil sit where she's a mind to."

William B. Breed testified, that he was acquainted with Shaw. His character was the same as related by the others. He said that the characters of Sprague and Buffum were very good.

Philip Chase, of Salem, was called again by the counsel for the government. He was asked as to the character of Jonathan Buffum. He said he was born in Salem, and he had always been acquainted with him till within two or three years: he was remarkable for his ungovernable temper, that could not be controuled.

Witness stated, that he was acquainted with Shaw. He formerly thought him not sound in mind, but afterwards thought otherwise. On one occasion he endeavoured to persuade him to leave the meeting, and succeeded. He saw Shaw at the funeral before mentioned, and then thought him deranged.

Josiah Clough testified, that Shaw observed to him, two or

three months ago, that he was determined to pull the old order down, for they were a stiff, arbitrary set. Witness saw nothing in him like insanity.

The examination of witnesses here terminated.

The counsel for the government stated, that the records of the Friends' society were in Court, by which it would appear that the defendants had been regularly disowned. They offered to produce them; but the Court stated, that they could not examine into the regularity of those proceedings, inasmuch as it was not material whether the defendants had been regularly disowned or not.

The cause was then submitted by the counsel on both sides without argument. The reasons of their thus submitting it were, the length of time employed in the introduction of the testimony, the agreement of all the witnesses as to the main points of the cause, and the avocations of the Judge in the other parts of his circuit, which rendered it necessary, that the session here should close as soon as possible, consistently with the purposes of justice.

The Court then charged the Jury as follows:

Gentlemen of the Jury,

The defendants stand charged with several offences, which are specified in the indictment. In relation to the main facts in the cause, there is no controversy: the testimony of the first witness introduced by the government stands uncontradicted.

The principal charge against the defendants is for a riot, in seizing and occupying the ministers' gallery in the Friends' meeting house at Lynn. This charge will attract your chief attention, because it is an offence of a more serious nature than the others. A riot is defined, "A tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist one another, against any one who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." If this definition is to be relied upon, it is of no consequence whether the defendants had or had not a right to take those seats. The only question is, whether they went with a determination to take possession of them by force.

That three or more were concerned, there is no doubt. You have it in evidence that several others abetted the defendants, by which they all became equally culpable. The defendants were warned by committees, who acted under the sanction of the society, not to take those seats; but they went there, notwithstanding. Buffum stood at the door, looking out, as if waiting for Alley. He was there when Alley came with his sword, and then followed him into the seats. The other defendant, Shaw, did the same. If Alley was sane, there is no question, but that in so doing he committed a breach of the peace. It was the same as to those who assisted him, and in consequence of their connexion they were guilty of a riot.

Basset says, that he requested them to come down, because

they disturbed the meeting. Several took hold of Shaw to remove him. He resisted, and injured the seat. Alley clung to him, to prevent his removal. This is evidence of a concert. It is immaterial whether they had a right to those seats, or not. If they went there with an intention to take the seats, and to resist any attempts to remove them, it must be considered a riot. Was their conduct tumultuous? There can be no doubt it was a breach of the peace, even if it had been on any other day. If in our society three or more persons should go to take possession by force of the pulpit, deacon seats or singing seats, it would be considered a riot. The law upon this subject is not generally understood. Persons may commit a riot in attempting to assert their rights. The law will not permit individuals to use force in such cases, but it requires them to surrender the power of redressing their wrongs into the hands of the government.

The only question between the parties seems to be, whether the defendants had a right to take those seats. But this is not material as to the first charge against them, for a riot. It is material however as to the three next charges, which are simply for disorderly conduct, and behaving rudely and indecently. There is no question but that these are offences at common law. It has been decided by our Courts, that disturbing a town meeting is such an offence; and the law is undoubtedly the same for disturbing a religious society. You will therefore inquire whether the people were assembled for public worship, and if the defendants were guilty of disorderly conduct in taking those seats. It is said by their counsel that the mere taking the seats was no disturbance of public worship; but the question is, whether it had not a tendency to disturb the peace. It is said, that there is no written regulation respecting the seats. But the same may be said of our pulpits. It is universally understood that the pulpit is appropriated for the minister; but there is no written rule upon that point, nor is it the case that none but ministers ever sit there: it is not uncommon for deaf persons to sit there; and in some places, where there is no settled minister, sermons are read from thence by other persons. The general usage however in our societies is well understood. It is common for example to have certain places in the singing seats reserved for the ladies, but if rude young men should intrude themselves into those seats they might be punished for disorderly conduct, though there is no law or written regulation to forbid their taking them.

You will then inquire, if it was agreeable to the regular usage of the society for the defendants to take the seats in question. Did they go to an improper place. If their conduct was irregular, you must find them guilty upon the second, third and fourth counts. But if it was not irregular, you must find them not guilty upon those counts. Upon this point the evidence is uncontradicted, that it is not usual for persons as young as the defendants to take those seats. One of their own witnesses testifies that he considered Shaw's taking them (at Providence) as a mark of derangement.

The defendants are charged in the fifth count with a conspi-

racy. If they had predetermined to take those seats, you must convict them upon this count; as it is the previous concert which constitutes the offence. Several persons have testified as to what took place previous to the meeting. You will recollect the testimony as to the threats of John Alley, and connect it with the conduct of Buffum in standing in the porch, waiting for him. If you have any doubt as to the previous agreement of the defendants, you must acquit them; otherwise you will find them guilty.

The sixth count is for a riot on the 14th February. You have it in evidence, that the defendants, Shaw and Buffum, went to the seats on that day. The same remarks therefore apply to this count as to the former. I have proceeded thus far upon the supposition of the defendants' being of sound mind.

With respect to Shaw, it is contended by his counsel, that he was deranged. You will recollect the testimony upon this point. It is barely necessary to remark, that the evidence of his derangement ought to be gathered from other facts than those with which he stands charged, unless his conduct upon that occasion was so extraordinary that no person in his right mind would be guilty of it. The burden of proof is upon the defendant, to satisfy you of his insanity, as every person is presumed to be sane till the contrary is proved.

The other defendant, Sprague, is indicted for the like offences only on the 17th Feb. The evidence against him is much less explicit, than against the others. It does not charge him with going there with a predetermination to take the high seats, but only with aiding and abetting the others when there. One person testifies, that he cried out, Let this man go up; and he resisted one of those persons who was carrying out Shaw. It is not necessary that there should have been a previous concert, to convict Sprague upon the charge of a riot. If, at the moment when he saw a breach of the peace take place, he aided and abetted in it, he is guilty. The degree of guilt may be very different; but that is only to be considered by the Court in passing sentence. If he was merely present, and assented to the conduct of others by any overt act of encouragement, as in the case cited of a person who merely suffered an emblem O. P. to be put in his hat by other rioters, he was guilty, as an accomplice, of the same offence. As to the second count against Sprague, for disorderly conduct, this depends upon the question, whether the others had a right to take the seats. If they had no right, he must be found guilty upon this count. His expressions tended to encourage the others. If he had been silent, or if he had used discouraging expressions, perhaps no tumult would have ensued.

As to the third count against Sprague, for a conspiracy, I do not recollect any direct evidence of his being concerned in the previous concert. Unless you recollect some, you will acquit him of this charge.

You have heard evidence as to the character of the defendants. In criminal prosecutions it is always the right of the persons charged to introduce such evidence, and it is competent afterwards for the government to rebut it by contrary testimo-

ay [illegible] cases, or in prosecutions for infamous offences, [illegible] great weight, but in cases like the present it is not so important. It requires the strongest evidence to prove that a person of fair character has been guilty of a theft, for instance; and in such case evidence of his good character would be very important. But in the present case the defendants did nothing which they conceived tended to destroy their reputation: they considered that they were only asserting their legal rights. With regard to their intent, it is not necessary that they should have intended to break the laws: the only question is, whether they intended to do the acts charged against them; and if they did, they are guilty of the offences for which they stand indicted.

The jury then retired, and in about two hours returned with a verdict of Guilty on all the counts against Jonathan Buffum and Preserved Sprague, and an acquittal of Benjamin Shaw, by reason of insanity: and when asked by the Clerk whether they found Benjamin Shaw *Guilty*, or *Not Guilty*, the foreman answered, "*Guilty in part, by reason of Insanity.*" The Judge then observed to the jury, that if they found him insane they should give their verdict of *Not Guilty*, which they did after conferring together.

Buffum and Sprague were called up next morning to receive sentence

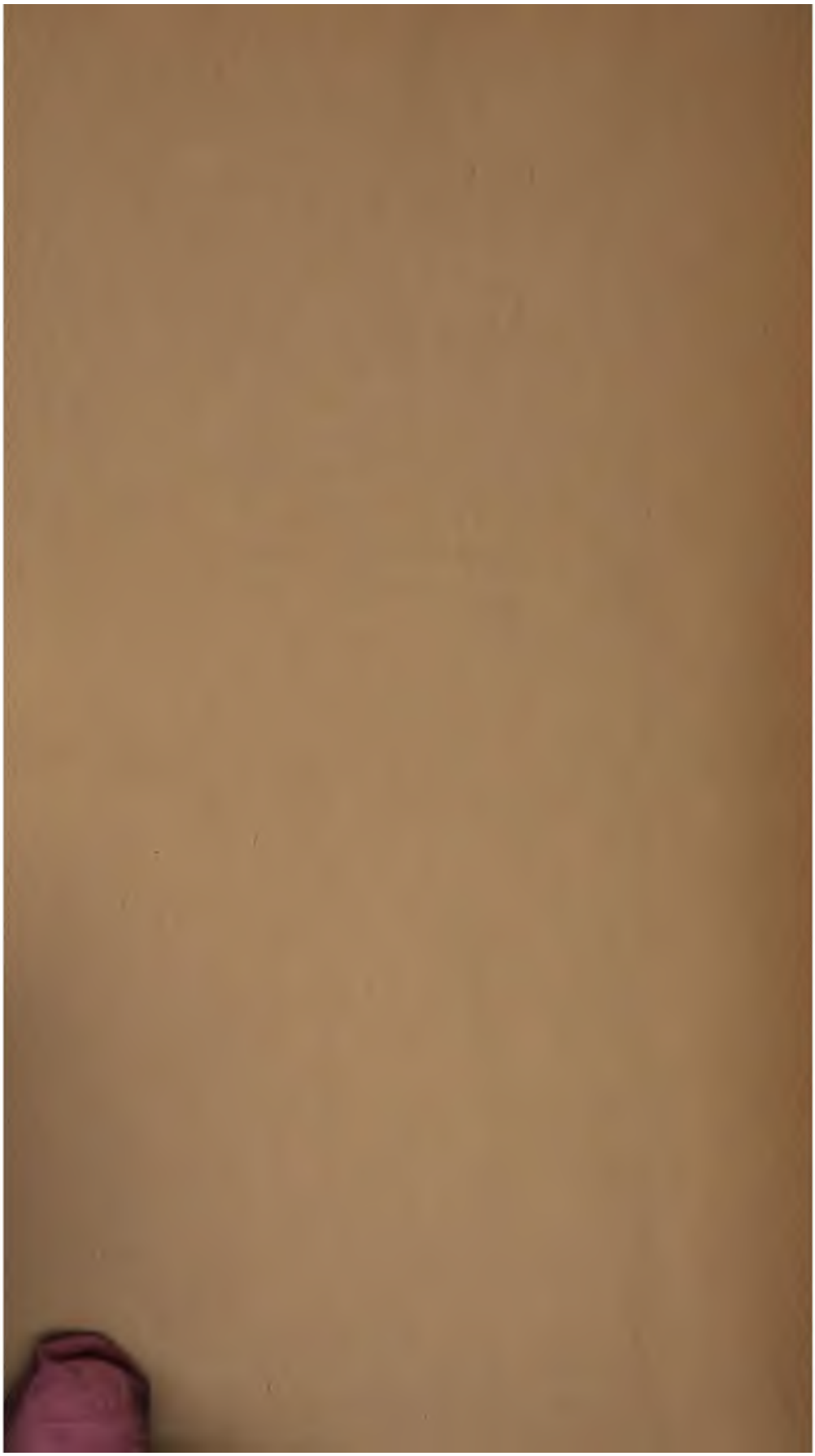
Mr. Saltonstall then stated, in mitigation, that Buffum was a mechanic of little property, with a family, and Sprague entirely destitute of property, with a large family of children, one of whom had been born since the father was imprisoned.

Mr. Merrill observed, that he was expressly instructed by the prosecutors to declare that this prosceution had been commenced not from any vindictive motives, but from necessity and for self-preservation: that a few days before the session of this Court, several members of the society had visited the defendants in prison and proposed to them, if they would simply give assurances that they would in future abstain from a repetition of these disturbances of the meetings, no complaint should be made against them to the grand jury; such assurances however could not be obtained. Even now the society wished the Court would impose as light a punishment as should be deemed consistent with the duty of the Court and the ends of justice.

The Court observed that the facts now suggested by the defendants' counsel, as well as the testimony to their general good character, and the probability that their offences had arisen from a delusion or misconception of their rights, would have due influence in measuring the punishment.—Buffum was then sentenced to pay a fine of *One Hundred and Fifty Dollars*, and Sprague *Seventy Five Dollars*.

The Court at the same time admonished the prisoners, that if these offences were repeated by them or their associates, the arm of the law would fall much more heavily on them.

Errors.—Page 22, line 14 from top, for Shaw read Buffum. Page 19, line 26 from top, for monthly read quarterly.



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